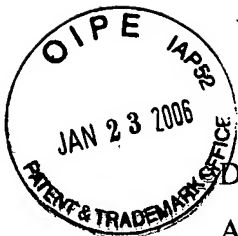# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Dayton, Ohio

Docket No. **9086.00**

Application of   JAN 19 2006

Alexander W. Whytock

Serial No. **10/004,132**   Group Art Unit: **2132**

Filed: **October 23, 2001**   Examiner: **Lan Dai T. Truong**

For: **ENCRYPTING KEYPAD MODULE**

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

This Appeal Brief is in furtherance of the Notice of Appeal filed in this case on

November 22, 2005. Three copies of the Appeal Brief are filed herewith. Authorization is

given to charge deposit account number 14-0225 for the fee under 37 C.F.R. 1.17 for filing

the Appeal Brief.

(1)   REAL PARTY IN INTEREST

The present application is assigned to NCR Corporation of Maryland.

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(2) RELATED APPEALS AND INTERFERENCES

None.

(3) STATUS OF CLAIMS

The above-identified patent application was filed on October 23, 2001 with claims 1-14. In response to an Office Action mailed on March 17, 2005, claims 1-14 were canceled and new claims 15-18 were added. In response to a final Office Action mailed on August 25, 2005, a Notice of Appeal was filed on November 22, 2005. Thus, claims 15-18 stand rejected.

Claims 15-17 are being appealed and are attached as an appendix to this Appeal Brief.

(4) STATUS OF AMENDMENTS

No amendments were filed subsequent to the last final rejection.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

<u>Independent Claim 15</u>

A method is provided of deriving a new key for use in an encrypting keypad module 30 (see page 9, line 26 to page 10, line 7). The method comprises:

receiving a file 190, 200 containing (i) instructions, (ii) data, and (iii) a reference to an encryption key (see Figs. 7 and 8; page 9, lines 16-25); and

using the received instructions to process the received data and the referenced encryption key to derive a new key (see page 9, lines 16-25).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

An issue presented for review is whether each of claims 15-17 is patentable under 35 U.S.C. Section 102(b) over U.S. Patent No. 6,226,749 to Carloganu et al. (referred to herein as "Carloganu").

(7)   ARGUMENT

Claims 15-17

In the final Office Action of August 25, 2005, the Examiner states the following:

"Using the received instructions to process the received data and the referenced encryption key to derive a new key: (Carloganu discloses the command is executed and "the appropriate data" which is equivalent to "encryption key" is returned: figure 11, items 150, 153, 155; column 11, lines 38-54, lines 59-61; column 12, lines 61-67; column 15, lines 24-30, 47-62; column 16, lines 1-35; column 20, lines 64-66)"

Based upon the above statement made by the Examiner, Applicant notes that

Carloganu states the following in column 11, lines 38-42 of the specification of Carloganu:

"Assuming the S_MAC_Val is authentic, the associated command primitive is executed and the *appropriate data* is returned. In this case the data may be simply an indication that the command was okay and was executed by the security module." *[emphasis of underlined italics added by Applicant]*
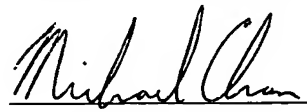
Applicant would like to respectfully point out that nowhere does Carloganu disclose

or suggest that the "appropriate data" which is being returned may be a reference to an

encryption key, as the Examiner would like to suggest.

Even arguendo if the "appropriate data" could be interpreted as being a reference to

an encryption key, there is no disclosure or suggestion of using this "appropriate data" to

derive a new encryption key, as recited in each of claims 15-17 of the present application. In

this regard, Applicant respectfully requests that the Examiner specifically point out where

Carloganu discloses or suggests that a new encryption key is being derived using a file which

contains instructions, data, and a reference to an encryption key. Absent an adequate

explanation, it is respectfully submitted that the rejection of claims 15-17 of the present

application is improper and, therefore, should be withdrawn.

Conclusion

In view of the forgoing reasons, it is clear that the rejection of claims 15-17 under 35 U.S.C. Section 102(b) is improper and, therefore, should be withdrawn. It is respectfully requested that the Board reverse the rejection of claims 15-17.

Respectfully submitted,

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(8)   CLAIMS APPENDIX

15.   A method of deriving a new key for use in an encrypting keypad module, the method comprising:

receiving a file containing (i) instructions, (ii) data, and (iii) a reference to an encryption key; and

using the received instructions to process the received data and the referenced encryption key to derive a new key.

16.   A method according to claim 15, further comprising:

storing the new key in the encrypting keypad module.

17.   A method according to claim 15, further comprising interpreting the received instructions to generate code for implementing the instructions.

(9)   EVIDENCE APPENDIX

None.

(10)   RELATED PROCEEDINGS APPENDIX

None.